THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.24232 of 2001

Dated:07.12.2006

Between
Penta Satyam

.....Petitioner

and

1.The Dy.Registrar, Coop Societies
Yelamanchili, Visakhapatnam District
And others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.24232 of 2001

ORDER:

This writ petition is filed seeking a Certiorari to call for the records in Rc.No.2059/98-B dated 30.4.1999 on the file of the 1st respondent as confirmed by the 4th respondent in O.A.No.229/99 dated 14.9.2001and to quash the same as illegal and arbitrary.

It appears that the petitioner was Paid Secretary of the 2nd respondent society. While so, under Section 50 of the A.P.Cooperative Societies Act, 1964, (for short 'the Act') an Audit was conducted and during the course of such Audit, it was found that the petitioner had committed certain irregularities and caused loss to the assets of the society. Therefore, the matter was referred under Section 60 (1) of the Act for detailed enquiry and passing orders. The Surcharge Authority issued

notice and passed the order dated 24.1.1994. Aggrieved by the same, the petitioner carried the matter in appeal being O.A.No.27 of 1995 before the 4th respondent-appellate authority. The appellate Tribunal after a detailed consideration of the order passed by the Surcharge Authority and after examining the available provisions of law, remanded the matter to the Surcharge Authority holding that since the Deputy Registrar acts as a Court while enquiring into the matter under Section 60 of the Act, the procedure as prescribed may be followed while dealing with the inspection report or enquiry report and allowed the appeal.

After remand, the Surcharge Authority passed fresh proceedings on 30.4.1999 in R.C.No.2059/88-B. Aggrieved by the same, the petitioner further carried the matter in appeal being OA No.229 of 1999. Thereafter, the appellate Tribunal, Vijayawada, after a detailed consideration of the order passed by the surcharge authority for the second time and after perusal of the impugned award and other material placed before it, came to the conclusion that the Surcharge Authority has not

committed any error calling for its interference, therefore, dismissed the appeal by an order dated 14.9.2001. Aggrieved by the same, the present writ petition is filed.

The 1st respondent filed a detailed counter denying the allegations made by the petitioner asserting that extracts of the special report of the Auditor pertaining to the aspects were also given to the petitioner along with surcharge notice. The petitioner was also directed to appear before the 1st respondent on 8.6.1998 along with reply statement and documentary evidence in answer to the aspects concluded in the Special Audit report of the Senior Inspector/Auditor. He was also provided opportunity to cross-examine the witnesses/Auditor, if any, during the course of independent enquiry conducted under the surcharge proceedings. The petitioner in his letter dated 8.6.1998 admitted that he received the surcharge notice on 26.5.1998 and requested 30 days time for filing his written statement objecting the proposed action. The allegation levelled by the petitioner in his letter dated 8.6.1998 is not correct as he stated that he

did not receive the Special Audit Report along with the Surcharge notice dated 19.5.1998. He agreed that he received the surcharge notice on 26.5.1998. Therefore, it must be understood that the petitioner has willfully dragged the matter for escaping from the liability, by making false statements. Further, it is asserted that the petitioner submitted his explanation dated 7.1.1994 admitting that an amount of Rs.42,543/- received from members towards MT Milch cattle loans, were already repaid on 19.9.88 and also stated that the amount of Rs.59,003.90paise actually relates to the deficit stock, but not fraud. Thus, he admitted his liability and there is no scope of escaping from the liability as he committed the fraud in the society while he was working as Supervisor/Secretary of the said society.

Learned counsel for the petitioner strenuously contended that *in spite* of several requests made by the petitioner for furnishing a copy of the audit report under Section 50, which is the basis for conducting the enquiry, the same was not issued to him. According to the learned counsel for the

petitioner, when the matter was remitted back for fresh consideration, the petitioner made a representation dated 8-6-1998. But, the audit report which was the basis for initiating Surcharge proceedings was also not furnished to him. Apart from that, the Tribunal earlier in O.A.No.27 of 1995 dated 29.7.1997 has categorically directed the Surcharge Authority to follow the procedure specified while conducting the enquiry under Section 60 (1) of the Act, but the same was not followed by the Surcharge Authority. The appellate authority also did not approve the same, therefore, the impugned order passed by the Surcharge Authority as confirmed by the appellate authority are arbitrary and illegal and are liable to be set aside.

Learned Government Pleader strenuously contended that the petitioner is intending to drag on the matter one way or the other. Absolutely, there is no reason as to why the order passed by the appellate authority should not be upheld.

I have given my earnest consideration to the

respective submissions made by the learned counsel on either side and perused the entire material made available on record.

At the outset, I am of the opinion that absolutely there is no evidence to show as to whether any procedure as required under law has been followed for the purpose of conducing enquiry under Section 60 of the Act. It is time and again held by this Court that the proceedings under Section 60 of the Act should be conducted similar to that of a Civil Court. In this case, admittedly, the auditor himself was not examined in chief nor any documents including the audit which is the basis for proceeding under Section 60 of the Act are marked. Thus, it is clear that the basic procedure required for the purpose of conducting an enquiry under Section 60 of the Act was not followed. Therefore, there is no necessity to go into all other details. This itself would show that the entire procedure required to be followed under Section 60 of the Act is given a go bye, therefore, the impugned order passed by the surcharge authority dated 24.1.1994 as confirmed by the appellate

authority in O.A. No.229 of 1999 dated 14.229 of 1999 are liable to be set aside and are accordingly set aside.

In the result, the writ petition is allowed and the matter is again remanded to the Surcharge Authority. The Surcharge Authority shall strictly follow the guide-lines issued by the Tribunal in its order dated 29.07.1997 in OA.No.27 of 1995 and pass appropriate orders as per law, after putting all the parties on notice and after giving them opportunity to lead evidence both oral and documentary. No costs.

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7-12-2006

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